

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
)
Interconnection and Resale Obligations)
Pertaining to Commercial Mobile Radio)
Services)

CC Docket No. 94-54

To: The Commission

DOCKET FILE COPY ORIGINAL

MOTION TO FILE REPLY COMMENTS OUT OF TIME

PrimeCo Personal Communications, L.P. ("PrimeCo") respectfully moves the Commission to accept the attached late-filed reply comments in the docket noted above.

Owing to an emergent matter, PrimeCo's counsel was unable to complete the filing for Friday, November 22, 1996. PrimeCo apologizes to the Commission for this inconvenience and therefore requests pursuant to 47 C.F.R. § 1.46(b) that it permit these replies to be filed one date after the filing date.

Respectfully submitted,

PrimeCo Personal Communications, L.P.

By: 

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November 25, 1996

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To: The Commission

**REPLY COMMENTS OF PRIMECO PERSONAL COMMUNICATIONS, L.P.
TO THIRD NOTICE OF PROPOSED RULE MAKING**

PrimeCo Personal Communications, L.P. ("PrimeCo") offers the following reply to comments filed on the Commission's third notice of proposed rule making¹ ("*Third Notice*") in the matter captioned above. In the *Third Notice*, the Commission sought comment on whether the roaming obligation applicable to commercial mobile radio service ("CMRS") providers should be defined to include the provision of "automatic" roaming service to other carriers.²

The overwhelming majority of the comments filed, including those of PrimeCo, opposed the imposition of a mandatory automatic roaming requirement upon CMRS carriers. From a philosophical point of view, these comments regarded the marketplace - and not government fiat - as the proper mechanism for guiding the development of wireless services. PrimeCo believes that this viewpoint is consistent with "the pro-competitive, de-

¹ *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rule Making* (August 15, 1996) ("*NPRM*").

² "Automatic" roaming refers to the ability of a CMRS customer to make or receive calls on a "foreign" network (that is, a network other than the one to which he subscribes) without the need to dial special access codes or take any action other than turning on the mobile telephone. This type of roaming requires technical compatibility between the subscriber's home carrier and the foreign network as well as a con-

regulatory national policy framework”³ Congress intended the Telecommunications Act of 1996⁴ to create and with the Commission’s view that the costs of regulation should not be imposed upon licensees unless clearly warranted.⁵

As the comments in this matter have shown, the need for an automatic roaming rule is not clearly warranted. Apart from some isolated charges,⁶ there is no evidence that carriers are refusing to enter into automatic roaming agreements. In fact, the evidence continues to grow that new CMRS providers are entering into more and more roaming agreements.⁷ In such circumstances, the adoption of new regulation without clear evidence of its need for the protection of the public interest goes against the grain of national policy underlying the Telecommunications Act as well as against the grain of the FCC’s own and oft repeated policy of relieving CMRS of unnecessary regulation. Indeed, unless it is clearly shown that the marketplace is unequal to the task of protecting consumers’

tractual arrangement between the two systems that will permit calls to be originated and terminated in this fashion.

³ H.R. Conf. Rep. No 104-458, 104th Cong., 2d Session 113 (1996). *See also*, NPRM at ¶ 27 (“...[I]mposing such a requirement is inconsistent with our general policy of allowing market forces rather than regulation to shape the development of wireless services.”)

⁴ Pub. L. No. 104-104, 110 Stat.56 (1996).

⁵ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, First Report and Order*, CC Docket No. 94-54 (July 12, 1996) at ¶ 14; *see also*, *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Service, Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1418 (1994) (The Commission has adopted a “goal of ensuring that unwarranted regulatory burdens are not imposed upon any mobile radio licensees who are classified as CMRS providers.”)

⁶ Radiofone complains that it has been denied a roaming agreement. *See, Radiofone, Inc. v. BellSouth Mobility, Inc.*, File No. E-88-109. In addition, Western Wireless’s comments in this proceeding make reference to unnamed carriers who have yet to offer Western Wireless roaming services that it cannot currently exploit.

⁷ *See*, “Omnipoint Opens N.Y. PCS With Flat Rates, Multifeature Phones,” *Communications Daily* (November 15, 1996) at 1: “Company is first U.S. provider to negotiate international roaming pacts ... Company already has roaming agreements with major GSM providers in U.S.”

interests, market forces, as the Commission has recognized,⁸ should determine CMRS deployment and operations.

Sufficient regulatory authority already exists for the Commission to take action should one carrier unreasonably discriminate against another in the provision of automatic roaming services. The Commission has found that roaming is a common carrier service governed by sections 201(b) and 202(a) of the Act.⁹ Consequently, a complaint for unjust or unreasonable discrimination in the provision of roaming service can be lodged with the Commission under section 208.¹⁰ This process is sufficient to remedy instances of unreasonable or unjust discrimination in the provision of automatic roaming services.

A number of commenters have remarked upon the expense that an automatic roaming rule would impose upon wireless carriers and, ultimately, upon their customers.¹¹ In addition to these costs, customers will likely suffer from the lessened bargaining power of their carriers to negotiate lower roaming rates on their behalf as the result of the operation of an automatic roaming rule like the one contemplated in this proceeding. For an automatic roaming rule is really, as AT&T points out,¹² a “most favored nation” rule forcing a CMRS carrier to enter into agreements with similarly situated providers at prescribed rates. Perversely, this rule could help so-called “tollgate”¹³ carriers maintain their high roaming charges by relieving them of the necessity to bargain and compromise with

⁸ See, n. 3, *supra*.

⁹ Second Report and Order at ¶ 10.

¹⁰ 47 U.S.C. § 208.

¹¹ The comments of CTIA describe the costs involved in implementing a roaming agreement. *Comments of the Cellular Telecommunications Industry Association* at 16.

¹² *Comments of AT&T* at 5.

¹³ A “tollgate” is a wireless market located between two unrelated markets and between which there is a volume of vehicular traffic.

other carriers over automatic roaming arrangements.¹⁴ PrimeCo agrees with AT&T that the Commission should not adopt a policy that makes it difficult for a CMRS provider to look out for the best interests of its subscribers.

Finally, fraud is a significant problem in the wireless industry. Historically, criminals have breached the security of wireless networks as roamers. To combat this threat, the industry has spent millions of dollars to develop systems to verify subscribers. Notwithstanding these efforts, fraud continues to grow in its magnitude and in its sophistication. To handle this problem, wireless carriers need flexibility in the way they deal with roamers and with other carriers. The most efficient way to deal with someone who has broken into the network is to deny service. Sometimes this can be done by denying service to the offending caller, but other times it may require suspending service to a particular carrier.¹⁵ Because an automatic roaming rule will establish a regulatory requirement and confer rights on third parties, it will necessarily reduce a carrier's flexibility to take precipitate and unilateral action to protect itself and its customers from fraud.

¹⁴ Indeed, the comments of the Alliance of Independent Wireless Operators (AIW) suggest such a result. AIW argues that an automatic roaming rule is needed not so much because any of its members' customers have been or would be denied roaming service by foreign carriers, but rather because rural carriers need roaming revenues to stay in business. *Comments of the Alliance of Independent Wireless Operators* at 5. This really amounts to a *de facto* NECA pool for rural cellular carriers with the telling difference that no customer of any carrier receives a benefit from the arrangement.

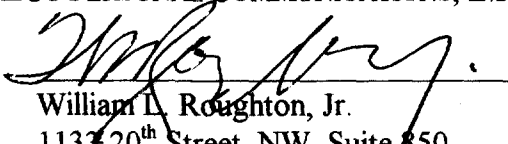
¹⁵ "The Essential Expectation," *Cellular Business* Vol. 12, No. 9 (September 1995), p.76-82

CONCLUSION

For the reasons set forth herein and in its comments filed earlier, the FCC should not adopt an automatic roaming rule. Rather, the Commission should act in a manner consistent with its "general policy of allowing market forces, rather than regulation, to the development of wireless technologies."¹⁶ That policy requires the termination of this proceeding without the imposition of additional regulatory obligations upon CMRS providers.

Respectfully submitted,

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Its Attorney

Dated: November 22, 1996

¹⁶ *Third Notice* at ¶ 26.

CERTIFICATE OF SERVICE

I Cheryl Bullock, an office manager for PrimeCo Personal Communications, L.P. hereby certify that I have, this 25th day of November 1996 served a copy of the foregoing by hand-delivery and U.S. Postal Mail to the following:

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